

Study guide

Law of the European Union

Minor EU Law and Human Rights

ADR-HBRM-504-11

Term A 2022-2023

Institute for Law
Bachelor of laws

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1 *About the course*

European Union law has become an ever more important legal source for an increasing number of areas of national law in the EU member states and thus for almost every legal professional in the EU. The impact of EU law can be clearly seen in e.g. criminal law, company law, labour law, environmental law and consumer law. In this course your basic knowledge of EU law already acquired will be further elaborated upon in order to be able to deal with EU law matters in practice. The focus will be on the practical consequences of general EU law in national law. In term B the specific areas of EU social law, EU asylum law, EU public procurement law and EU state aid law will be studied at a more advanced level.

After having concluded this course you will be able to analyze a practical EU law case and to advise about such a problem to a client. Since EU law is formed largely by the case law of the EU Court of Justice (ECJ), significant attention will be given to reading, understanding and analyzing judgments of the ECJ.

The course will be taught in English and all materials to be read (case law, legislation, text books) will be in English as well. In fact, you will practice reading and understanding English legal texts a lot in this course.

The exam will be in English, however, for Dutch students, you are allowed to answer the questions in Dutch.

2 *Entrance requirements for course and exam*

In order to be able to successfully participate and pass this course you need basic legal knowledge and basic knowledge of the English language.

3 *Relevance to professional practice*

As indicated above, EU law has a large impact on an increasing number of fields of law in the member states. However, in practice it appears that relevant EU law aspects of legal issues are often not recognized. As a consequence, legal professionals may not give the best advice to their clients or even miss opportunities for private individuals and companies that could have been derived from EU law.

In addition, the national authorities of the member states are under an obligation to apply provisions of EU law that have direct effect or are directly applicable themselves.

Therefore, any legal professional should be aware of the potential consequences of EU law in the national legal system and in every day legal practice.

Both in private and public law you will regularly be confronted with EU law issues. For example, for companies this concerns, labour law, environmental law and public procurement law. As far as the public authorities are concerned, they find it increasingly important to make sure that their legislation and decisions are “EU-proof”, in order to prevent that their decisions run the risk of being quashed by the national judge for being incompatible with EU law.

4 Relationship to the study

The course Law of the European Union is part of the minor program EU law and Human Rights. This course provides the basis for the advanced EU law courses offered to you in term B. (EU social law, EU asylum law and Law and economy of the EU)

5 Language of instruction

English

6 Relationship to other areas of the study

The course builds upon the knowledge of EU law already acquired in year 2 or equivalent basic knowledge.

7 Competences addressed

To analyse, to decide, to advise and to represent interests.

8 Study goals

At the end of the course:

- the student has basic knowledge of and understands the functioning of the EU institutions and the EU's decision-making process

- the student has basic knowledge of internal market law
- the student has a good understanding of the consequences of EU law in the national legal order of the member states
- the student is able to read, understand and analyze judgments of the ECJ
- the student can proactively indicate the consequences of EU legislation or case law for a client and provide advice
- the student is able to provide relevant information on EU policies and legislation for a client
- the student is able to use internet sources related to EU law

You will find more specific study goals per week in the schedule in section 12 *Activity overview* of this study guide.

9 Content (basic knowledge)

Substantive and institutional law of the European Union.

10 Work methods and actual instruction time

Lectures 7 x 2 hour(s)

Tutorials 7 x 2 hour(s)

Self-study

11 Attendance requirements

Attendance is not compulsory. It is, however, highly recommended to attend the lectures and tutorials in order to improve your chances of passing the exam.

12 Activity overview

Every week there will be a lecture and a tutorial on the same topic. The lectures provide for a general overview of that week's topic. Next, in the tutorial you are expected to have prepared the questions and exercises for that week. These will then be discussed in the tutorial. Part of the lecture or tutorial will be spent on the group presentation.

The course 'Law of the EU' will be concluded by a final assignment (30% of the final grade) and a written exam consisting of open questions (70% of the final grade). In order to pass this course both the assignment (30%) and the written exam (70%) must be passed (min. grade 5,5 each!).

- 1) Written exam (EXAM1): 70% of the final grade (for example of an exam, see CANVAS);

The course will be concluded by written examination based on the theory of the text book, assignments in this study guide and the case law discussed in the course (70% final grade).

The text book EU law Directions, written by Nigel Foster is accompanied by Blackstone's EU Treaties & Legislation 2022-2023. The Treaties and legislation should be read and used next to the EU law Directions text book when preparing the lectures and tutorials. During the exam you may use all study materials.

Please note that you have to look up the case law and legislation yourselves.

- ECJ case law can be found at www.curia.eu
- EU legislation can be found at <http://eur-lex.europa.eu/en/index.htm>

The use of these website will be explained in the first tutorial.

- 2) Assignment (EXAM2): 30% of the final grade: this assignment is a group assignment (1) (see below): see CANVAS for further instructions (case law presentation schedule and assignment instructions) and rubric.

Group presentation of ECJ judgment and the opinion of the Advocate General: made by three students and presented in class by using f.i. Power Point:

- i. on written analysis (Assignment, group grade): 30% of the final grade.

Presentation:

You are to give a presentation in a group of 3 in front of your class.

- The presentation lasts approximately 12 (min.) -15 (max.) minutes. The speaking time is divided equally between the students in the group
- The subject of the presentation is the ECJ case assigned for your GP (see the presentation schedule on CANVAS for relevant cases and in which week the GP should be taking place via MS teams).
- You will be assessed and evaluated by the teacher based on the Rubric MCS and also by your class members (to get familiar with the MCS Rubric). The teacher will decide on pass or fail.

Should you not pass for your presentation, you will be given a second chance to present on the same topic in week 7 of the respective term (resit). A pass for the presentation is a condition for passing the course.

At each presentation of a case there will also be two co-referents present. These co-referents have the task to comment on the contents of the presentation and to ask relevant questions on for instance the particular essence and broader importance of the case for European Union law. Also a sufficient grade for performing the role of the co-referents present at the presentation of the case is a condition for receiving the grade of the written report.

Schedule of activities per week

Week	Topic	Study materials	Assignments
A1	Introduction to EU law	Ch. 1 – 2 Directions ECJ case law: Case C-137/09 <i>Josemans</i>	Read <i>Josemans</i> judgment Questions Week 1
A2	EU law-making and effects of EU law in national law	Ch. 3 - 5 and 8 Directions (except 5.2 and 5.3) ECJ case law: See case law presentations schedule under tab 'files' on CANVAS.	Questions week 2 Case law presentations
A3	Procedural actions, enforcement and remedies	Ch. 6 – 9 Directions ECJ case law: See case law presentations schedule under tab 'files' on CANVAS.	Questions week 3 Case law presentations
A4	Guest lecture: Free movement of goods by prof.	Ch. 10.1, 10.2 and 11, Directions	Questions week 4 Case law presentations

	dr. M. Jaensch of HTW Berlin	ECJ case law: See case law presentations schedule under tab 'files' on CANVAS.	
A5	Internal market: Free movement of persons and citizenship	Ch. 12 Directions ECJ case law: See case law presentations schedule under tab 'files' on CANVAS.	Questions week 5 Case law presentations
A6	Freedom of establishment and free movement of services	Ch. 12 Directions ECJ case law: See case law presentations schedule under tab 'files' on CANVAS.	Questions week 6 Case law presentations
A7	EU Competition law Exam preparation and question time	Ch. 13 Directions, Foster, p. 387 -399 excluding 13.3.5.	Make the old exam; published on CANVAS Remaining case law presentations

13 Examination/assessment

The examination of this course is divided in two parts:

- 1) Written exam (70% final grade)
- 2) Assignments (30% final grade)
 - Presentation of ECJ judgment + written summary (assignment) made by two students (30% final grade);
 - Sufficiently fulfilled the role of co-referent to a presentation of case law (assignment);

The assignment must be uploaded to "Gradework". Assignments that are not uploaded or not timely to "Gradework" cannot be graded.

The assignments will be graded 1-10. Should the average grade of assignment be below 5,5 you could be obliged to write a new individual assignment (different judgment/topic).

The remaining 70% is to be gained in the written exam. Please note that 5,5 out of 10 is a pass. The resit of the written exam will be in Term B by the end of January 2023. A second chance to hand in the assignment will be given in term B. The deadline is on the last Friday of term B. Be sure to enroll through Osiris for a resit of the written exam or any assignment.

14 Exemption conditions

Students are permitted to request exemption from courses in the curriculum. Exemption requests are evaluated per course. Approval for exemption entitles students to the equal amount of study points awarded on satisfactory completion of the course in question.

No grade can be obtained from any course from which students have received exemption. Study points gained from an exempted course are not counted in the case of mandatory compliance with advice from school authorities regarding continuation of study. It is a task of student study supervisors (SLB'ers) to bring this to the attention of students. Exemptions are not counted when honors designations are determined (e.g. bene meritum; cum laude).

The exam committee authorizes exemptions; the exemption coordinator of the study in question provides advice re exemption matters to the EC.

Students considering requesting one or more exemptions are to first consult with their study supervisor before applying for exemption.

Further information re exemption can be found in section 6.2 of the study guides. See the HU Education and Examination Regulations (Onderwijs- en examenregeling) 2018-2019 for detailed information re exemptions.

15 *Student study attitude standards*

Students are expected to participate in an active manner. It is therefore necessary that you read the materials and cases in advance.

16 *Literature*

- EU law Directions, Nigel Foster, seventh edition, Oxford University Press, ISBN:
- Blackstone's EU Treaties & Legislation 2022-2023, Oxford University Press
- Study guide Law of the European Union 2022-2023, available through downloading on the CANVAS site

17 Study load

The study load standardization is 5 ECTS (140 hours). The load is generally divided into the following categories:

- lectures: 14 hours (7 x 2)
- tutorials: 14 hours (7 x 2)
- self-study per week (reading materials and cases, preparing questions and exercises): 70 hours (7 x 10)
- exam preparation (including assignment 1 and 2): 42 hours

18 Evaluation

This course will be evaluated by filling in a questionnaire. In response to last year's evaluation a written exam has been introduced in order to test the theoretical knowledge acquired by students. Last year there were only written assignments. In addition, we selected a new text book which is more accessible for bachelor law students.

19 Organization

Course coordinator: Merijn Maassen

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20 Questions per week

1 Introduction to the EU

Learning objectives

After this week you will be able to understand:

- why the EU (previously EEC, EC) was originally set up
- indicate the establishment of the EEC and EC (the Communities)
- the aims and goals, and indicate the changes that those aims and goals have undergone
- the expansion and development of the Communities and the Union
- the increase in policies and integration
- the external relations of the EU
- where we are today with the EU
- the institutional framework of the EU
- the working of the following EU institutions
 - o Commission
 - o Council of Ministers
 - o European Parliament
 - o European Council and President
 - o European Court of Justice

Reading materials

Ch. 1 (except 1.6) and 2, Directions

Questions and exercises:

1. When you study the history of the EU you will regularly read about the EEC and the EC. These terms are even used interchangeably. Please explain briefly the development of the EU in legal terms, using the terms EEC and EC.
2. What is meant by the widening of the EU?
3. Discuss whether the following countries could become a member of the EU: Canada, Ukraine, Morocco, Turkey, Belarus, Iceland.
4. What is meant by the deepening of the EU? Given an example.

Week 2 Sources of EU law and EU law-making

Learning objectives

After this week you will be able to understand:

- The transfer of power from the member states to the Union
- The division of competences between the member states and the Union
- The principles of proportionality and subsidiarity
- The processes by which EU law is made
- The various sources of EU law (e.g. Regulations, Directives)

Reading Materials

Ch. 3, 4, and 5 (except 5.2.2, 5.3.2, 5.3.3, 5.3.5, 5.3.6) Directions

Questions and exercises:

1. Describe the role and powers of the European Commission, The Council (of Ministers), the European Council and the European Parliament.
2. What is the importance of legal basis provisions in the Treaty for the divisions of competences between the EU and the Member States? What are the most relevant provisions of the TFEU that can serve as a legal basis for secondary law on the internal market?
3. The Council wants to adopt a regulation on rail transport dealing with safety requirements for high speed trains. The Commission has proposed art. 91(1)

- TFEU, while the European Parliament thinks it should be art. 114 TFEU. What is the appropriate legal basis according to you?
4. Look up Part Three of the TFEU and find five areas of activity (policy areas) of the EU and look for the specific legal basis provisions for these areas. Determine the type of act that the institutions can adopt and which legislative procedure has to be used for their adoption.
 5. Name the legal basis provision(s) that can be used in the area of the free movement of goods.
 6. Find a recent Commission proposal in the Official Journal and examine whether the correct legal basis is applied.
 7. There is a huge surplus of meat and dairy products in the EU. It is therefore necessary to reduce the production of meat and milk. In that context, the Council adopts a regulation regarding the slaughtering of cows. According to a provision of this regulation, every farmer who within a certain time period slaughters cows receives a premium from his Member State. Mr. De Vries from Bunnik in the province of Utrecht (NL) has slaughtered some cows, but is refused the premium by the Dutch authorities. Before the district court of Utrecht, the Dutch state acknowledges that according to EU law, the premium should be paid, but points out that this is not possible under Dutch law. Being part of the Dutch state, the Dutch authorities have to respect Dutch law before everything else. Will the judge in Utrecht agree with this view?

Week 3 Procedural actions, enforcement and remedies in EU law

Learning objectives

After this week you will be able to understand:

- Procedural law of the EU
- The different procedural actions provided by the TFEU
- The remedies developed by the Court of Justice
- The details of the preliminary reference procedure (art. 267 TFEU)
- The enforcement actions that may be taken against a member state
- Direct applicability and direct effects of EU law
- The distinction between vertical and horizontal direct effects
- The different direct actions against the EU institutions before the Court of Justice

Reading materials

Ch. 6, 7, 8 and 9 (except 9.3) Directions

Questions and exercises:

1. Anu Sorsa, a Finnish national, is teaching in state school in a new Member State of the EU. During a talk with a colleague who is doing the same work, Anu realizes that she makes less money than her male colleague. This situation is in line with the legislation of the new Member State. Anu has heard about art. 157 TFEU, on equal pay for equal work of men and women. She takes her employer to court in order get more pay. Is she able to succeed in bringing the claim before the national court? Does it make a difference if Anu's employer would be a big supermarket?

2. Pieter Scholten, a law student at HU, sets up a private website where he places legal texts which he has taken from a CD-rom issued by the publishing house LAWTEXT Ltd. LAWTEXT demands that Pieter immediately takes the legal texts off his site. Pieter refuses to do so. The publishing house wishes to take him to court. It is aware of the existence of an EU Directive on databases which aims at protecting the makers of all kinds of databases, including CD-roms. There is a provision in this directive which provides that the maker of a database can deny third persons certain types of use of the database, including copying it in order to put its content on the internet. LAWTEXT is confident that this provision will help it and consults you, working as a trainee in the legal department. What will you tell LAWTEXT?
3. The official slogan of the Dutch tax authorities is "*Leuker kunnen wij het niet maken, wel makkelijker.*" (We cannot make it nicer for you, but at least we can make it easier.) Wishing to live up to this slogan, the tax authorities put the most important tax provisions on their website, along with easy to understand explanations. The legislative texts are taken from LAWTEXT's CD-rom. LAWTEXT takes the tax authorities to court and (as above) points to the Database Directive. Will the national court accept LAWTEXT's argument?
4. What degree of discretion does a Member State enjoy in view of a new EU Regulation? What are the consequences of this situation with regard to direct effect?
5. *Pfeiffer*, a very important case decided by the ECJ in 2004, concerned a dispute between a number of workers engaged in emergency medical services (ambulances) and their employer, the German Red Cross, over the interpretation of provisions of the so-called Working Time Directive. The Court found that the Directive's provision that limits the average working week to at the most 48 hours is sufficiently clear and precise and unconditional. In spite of this, the Court found

- that in a case such as the one before it, the applicants are unable to directly rely on the provision. What might have been the reason for this?
6. What alternative instrument might individuals have in order to have their rights under an EU directive protected in a situation where there is no direct effect?
 7. Why is the notion of “state” so important in the context of the direct effect of directives?
 8. Name three courts in your own country that are obliged to refer questions on the interpretation of EU law to the ECJ under art. 267 TFEU.
 9. Suppose the Belgian government introduces a system of toll to be paid by trucks driving the Belgian motorways. The Dutch government thinks this toll system is an obstacle to the free movement of goods. What instrument of EU law can the Dutch government use against Belgium?

Week 4 **Internal market: free movement of goods**

Learning objectives:

After this week you will be able to understand:

- The basic definitions relating to economic integration
- The basic legal regime for the free movement of goods
- The definition of quantitative restrictions and measures having equivalent effect
- The case law developments of free movement of goods

Reading materials:

Ch. 10.1, 10.2 and 11, Directions

Questions and exercises:

- 1) In the framework of Art. 34 TFEU, the landmark cases *Dassonville*, *Cassis de Dijon*, and *Keck* are extremely important because they explain the meaning of one particular element in the prohibition contained in Art. 34 TFEU.
 - a) What is this element and why is it part of the prohibition under Art. 34 TFEU?
 - b) Explain the essence of these landmark cases.
 - c) Explain the further development of the case-law of the ECJ by means of cases *Commission vs Italy* and *Mickelsson and Roos*.

- 2) In Italy a new law is adopted which is aimed at prohibiting a health claim of soft drinks which entails that the drink is healthy. The Italian ministry of Health claims that scientific information supports the claim that soft drinks because of the use of amongst others sugar are not healthy. A lot of producers are worried that the prohibition entails an image risk. They furthermore claim that the prohibition impedes the free movement of goods.

You work as a legal advisor and you are asked for advice.

- a. Explain what kind of restriction the prohibition on the health claim is.
 - b. Explain whether the measure could possibly be justified.
 - c. Is the measure proportionate under the Treaty free movement rules?
- 3) There was a time, not too long ago, when refrigerators and freezers did not exist in Europe. At that time it was quite difficult to preserve certain types of food. Salt was the most important means to keep, for instance, meat and fish. Because salt was so important and often rare, the State (at those times: the prince or the city) controlled the salt trade and set up rules regulating that trade. Consider the following cases and assess the rules in question in the light of today's EU law and against the background of today's Europe.
- a) The salt used in Vienna, Austria, comes mostly from other Austrian areas but also from what today are other European countries. For reasons of local tradition, the rulers of Vienna (the house of Habsburg) set up the rule that salt has to be sold in a specific form, namely in a cylindrical shape.
 - b) The Italian salt dealer Salina transports salt from the "Salzkammergut" (area in Austria) to Vienna. There he wants to sell it on the market in front of the Dome of St. Stephan. However, he is stopped from doing so because the law prohibits selling any food close to the entrances of holy places, including the Dome.
 - c) Much of the salt used in the Grand Duchy of Baden (now Germany), originates from places in Austria. The rulers of Baden decide that salt can only be sold in a

special building, namely the local salt hall. The reason for this is to make sure that there is always sufficient salt of a good quality.

Week 5 **Internal market: free movement of persons and citizenship**

Learning objectives

After this week you will be able to understand;

- The meaning and importance of the internal market
- The concept of who may be considered an EU worker
- The basic rights that economically active EU nationals enjoy
- The rights of free movement of self-employed people
- The derogations on the right of free movement
- The concept and meaning of the 'wholly internal' rule
- The treatment of independent third-country nationals
- The extension of free movement rights to general rights of free movement
- The rights provided as a result of EU citizenship

Reading materials

Par. 10.1 and 10.2, Directions

Ch. 12.1 till 12.3.4 and 12.5 Directions

Ch. 13, Directions

Questions and exercises:

1. Explain what is meant by the wholly internal rule and give an example of such a situation.

2. Why is the legal position of Third Country Nationals different from the rights that EU-citizens have?

3. A few years ago, the ECJ had to decide on a case involving Mr. Igor Simutenkov, a professional footballer of Bulgarian nationality who, at the relevant time, worked for the Spanish football club *Deportivo Tenerife*. Before a national court, Mr. Simutenkov had complained about a rule set up by the Spanish Football Association which limited the number of professional players having the nationality of EU/EEA Member States, not having the Spanish nationality who may appear on a team in a football competition.
 - a) Assume that another case involves a Dutch footballer wants to join Deportivo Tenerife. Which provisions of EU law are relevant in such a case and why?

 - b) Which right of the footballer is infringed and what type of infringement is at issue?

 - c) Assume the Football Association argues that its rule is justified in the interest of the clubs' constitutional right to freedom of association, a right that is also part of international human rights law. In the framework of EU law, will such an argument succeed?

4. Ms. Nana Mouskouri is a Greek national who works as a receptionist at a hotel on the island Corfu. She considers that she is working very hard for little money and decides to look for work elsewhere. Consider the following situations:
 - a) Ms. Mouskouri succeeds in finding a job in Denmark. When arriving at the airport in Denmark, the immigration officials refuse to let Ms. Mouskouri enter because she suffers from tuberculosis. Are the authorities entitled to keep Ms. Mouskouri out?

- b) When arriving at the airport in Denmark together with her husband Nicolas and their two small children, only Ms. Mouskouri is allowed to enter. The reason for this is that, in the view of the authorities, Ms. Mouskouri will not make sufficient money to support her family. Under EU law, do Nicolas and the children have a right to accompany their wife and mother? Do they also have a right to reside in Denmark?

- c) Ms. Mouskouri takes up her new job. However, when she gets her first tax bill, she finds that she has to pay higher income taxes than her Danish colleagues. Is that acceptable under the EU law?

Week 6 Freedom of establishment and free movement of services

Learning objectives:

After this week you will be able to understand:

- The meaning of freedom of establishment;
- The meaning of free movement of services;
- The meaning of the Services Directive.

Reading materials:

Ch. 12.4, Directions

Ch. 13.1 till 13.1.1.3, Directions

Questions and exercises:

1. Ms. Chavanel is the manager of a French insurance company that plans to open extra offices (branches) in a number of other Member States. However, when trying to do so, the company encounters problems. In Member State A, there is a rule that in order to be allowed to set up a branch, an insurance company must have been doing business in that country for at least twenty years. In Member State B, Ms. Chavanel is informed that the setting up of branches is possible only for insurance companies of that very country but not for those from other Member States. In both cases, the authorities argue that the insurance business is of a particularly delicate nature and therefore requires consumer protection.

Question:

Ms. Chavanel finds all of this very tiresome. She asks you to assess the rules of the two Member States in light of EU law.

2. The same company wishes to expand its business to other EU Member States. It has plans to do so by offering its services via the internet not only in its country of establishment (France) but also in other EU Member States. However, when obtaining information on the legal situation in other Member States, its director, Ms. Chavanel, finds that in Member State A, the law requires that each large insurance contract must be authorized by the state authorities before being concluded with the client. In Member State B, there is a rule that only domestic companies can offer certain types of insurance, which also cover the business of Ms. Chavanel's company.

Question:

Ms. Chavanel doubts that these rules are in line with EU law and asks you to assess them.

3. Franck is the director of a business called Goodnight Beds based in Leuven, Belgium. Franck has developed a revolutionary service for consumers to try out beds at home before the sale is completed. Franck and his employees will after the test period walk through the final details with their clients. Afterwards, the deal is completed. Business is rising and orders from various Member States follow. To serve this demand Franck trains and hires self-employed personnel in various Member States.

In Austria national law lays down the obligation to have practiced as a bed seller in Austria for at least one year. This law is established in order to maintain quality of bed selling services.

Franck sees that when his services are provided through one of his contracted bed sellers based in Austria his company is forced to comply with all these requirements considered.

You work as a legal advisor and you are asked for advice.

- a. Which Treaty freedom is applicable?
- b. Explain whether the restriction entails direct discrimination, indirect discrimination or impedes market access.

- c. Consider whether the TFEU or directive 2006/123 is applicable.
 - d. Do you think Austrian law is allowed?
4. Harry is a Irish freelance journalist who wants to make a documentary in Romania on the circumstances of life of the Roma. He has had contact with multiple journals who are interested in publishing his story. If he is preparing his trip, he reads on the internet that journalists staying in Romania need to have a valid press card in their possession at all times. This press card has a passport photograph and is proof of the fact that the holder of the card performs the profession of a journalist. Harry can apply for a press card electronically and pick up the card free of charge at the Romanian embassy in Dublin or at the airport in Romania.

Question:

Is the condition for a journalist in Romania to be in the possession of a press card in conformity with the Services Directive?

Week 7 EU Competition law and exam preparation time

- No exercises, only the lecture is obligatory. See the test exam for an example of an exam question;
- Prepare the question in the test exam as an exam preparation. The answer will be discussed in class.